

1 BILL NO. S-83-08-2/

2 SPECIAL ORDINANCE NO. S-168-83

3 AN ORDINANCE approving a Contract  
4 by the City of Fort Wayne by and  
5 through its Board of Public Works  
6 and Earth Construction & Engin-  
eering, Inc., for Res. #371-82,  
Phase II, Pump Station Elimina-  
tion/Interconnect Project.

7 NOW, THEREFORE BE IT ORDAINED BY THE COMMON COUNCIL  
8 OF THE CITY OF FORT WAYNE, INDIANA:

9 SECTION 1. The annexed Contract, made a part hereof,  
10 by the City of Fort Wayne by and through its Board of Public  
11 Works and Earth Construction & Engineering, Inc., for Res.#371-82,  
12 Phase II, Pump Station Elimination/Interconnect Project, is  
13 hereby ratified and affirmed and approved in all respects. The  
14 work under said Contract requires:

15 Contract for Res. #371-82, Phase II, Pump  
16 Station Elimination/Interconnect is in-  
17 tended and adapted for use by property  
18 holders whose property abuts along the  
19 line of said sewer; but is also intended  
and adapted for receiving sewage from  
collateral drains already constructed, be  
the same is hereby ordered:

20 PHASE II  
FORCE MAIN INTERCONNECTION

21 Beginning at a proposed manhole to be  
22 located 80+ feet West of and 55+ feet  
23 North of the centerline intersection of  
24 St. Joe and Rothman Roads, on an existing  
25 24" sanitary sewer line thence Southerly  
a distance of 65 feet along a curve of  
radius 35 feet and chord of 56 feet to  
the location of an existing 4" force  
main;

26 involving a total cost of Two Thousand Three Hundred and No/100  
27 Dollars (\$2,300.00).

28 SECTION 2. A copy of said Contract is on file in the  
29 Office of the Board of Public Works, and is available for public  
30 inspection.

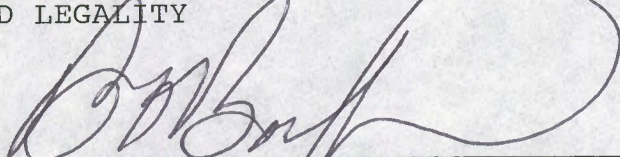
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Victor L. Scruggs  
Councilmember

APPROVED AS TO FORM  
AND LEGALITY



Bruce O. Boxberger, City Attorney

Bruce O. Boxberger, City Attorney



Read the first time in full and on motion by Scruggs, seconded by Scruggs, and duly adopted, read the second time by title and referred to the Committee City of Fort Wayne (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., E.S.T.

DATE: 8-9-83

Sandra E. Kennedy  
CITY CLERK

Read the third time in full and on motion by Scruggs, seconded by Scruggs, and duly adopted, placed on its passage. PASSED ~~(LOST)~~ by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>9</u>	_____	_____	_____	_____
<u>BRADBURY</u>	<u>✓</u>	_____	_____	_____	_____
<u>BURNS</u>	<u>✓</u>	_____	_____	_____	_____
<u>EISBART</u>	<u>✓</u>	_____	_____	_____	_____
<u>GIAQUINTA</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHMIDT</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHOMBURG</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCRUGGS</u>	<u>✓</u>	_____	_____	_____	_____
<u>STIER</u>	<u>✓</u>	_____	_____	_____	_____
<u>TALARICO</u>	<u>✓</u>	_____	_____	_____	_____

DATE: 8-23-83

Sandra E. Kennedy  
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (~~ZONING MAP~~) (~~GENERAL~~) (~~ANNEXATION~~) (~~SPECIAL~~) (~~APPROPRIATION~~) ORDINANCE (RESOLUTION) NO. 1-168-83 on the 23rd day of August, 1983.

ATTEST:

(SEAL)

Sandra E. Kennedy

Ray A. E. York

CITY CLERK

PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 24th day of August, 1983, at the hour of 11:30 o'clock 7 M., E.S.T.

Sandra E. Kennedy

CITY CLERK

Approved and signed by me this 26th day of August, 1983, at the hour of 2:00 o'clock 5 M., E.S.T.

Win Moses, Jr.

WIN MOSES, JR. - MAYOR



CONTRACT NO. 371-1982  
(PHASE II)

THIS CONTRACT made and entered into in triplicate this 20<sup>th</sup> day of July, 1983, by and between EARTH CONSTRUCTION AND ENGINEERING INC., herein called CONTRACTOR, and the City of Fort Wayne, Indiana, an Indiana Municipal Corporation, acting by and through the Mayor, and the Board of Public Works herein called OWNER,

WITNESSETH that the Contractor and the Owner for the considerations hereinafter named, agrees as follows:

ARTICLE 1. SCOPE OF WORK

Contractor shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the installation of the following:

Pump Station Elimination/Interconnection Project, Phase II.

Said pump station elimination interconnection Phase II with all appurtenances to be in accordance with the plans, profiles, special provisions and specifications now on file in the Office of the Board of Public Works of said City.

All work done in the making of the aforementioned public improvement shall be in accordance with the terms and conditions of the Resolution aforementioned and the plans, profiles, special provisions and specifications now on file in the Office of the Board of Public Works.

The total cost of said Improvement shall be paid by funds from the Sewer Utility Fund of the City Utilities of the City of Fort Wayne.

all according to Fort Wayne Pollution Control Engineering Department Drawing No. SY-11102, Sheets 1-11 and do everything required by this contract and the other documents constituting a part hereof.

ARTICLE 2. THE CONTRACT SUM

The Owner shall pay Contractor for the performance of the contract the unit price sum of \$2,300.00. In event the amount of work is increased or decreased by Owner, the contract sum shall be increased or decreased according to the lump sum schedule set forth in the Contractor's Proposal as follows:

Installation of 75± LF of a 4" PVC SDR 18 Force Main and one (1) 48" std. MH Type I-J all according to plans and profile details, special provisions and the City of Fort Wayne's Standards and Specifications. (Lump Sum)	Two Thousand Three Hundred and no/100 Dollars	\$2,300.00
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### ARTICLE 3. PROGRESS PAYMENTS

The Owner shall make payments on account of the contract as provided herein, as follows:

Monthly progress payments will be made by Owner upon submission of a statement of quantities of work completed and/or materials supplied to the job site as of the end of each month. On or about the 15th day of the following month, ninety (90%) percent of the value of the work performed up to the first day of that month (based on the contract price of labor and materials incorporated in the work) and as estimated by the Contractor and approved or revised by the Engineering Department of the Owner, less the aggregate of previous payments, will be paid by Owner to the Contractor.

### ARTICLE 4. ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due at the time the work is fully completed and accepted and the contract is fully performed.

Upon filing of a Completion Affidavit by the Contractor that the work is ready for final inspection and acceptance, the Board of Public Works will direct the Engineering Department of the Owner to promptly make such inspection. When the Engineering Department finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the Board of Public Works which shall issue a final certificate stating that the work provided for in this Contract has been completed and is accepted thereupon, and the entire balance of the Contract sum shall be due and payable to the Contractor; provided only that Contractor shall first furnish Owner, if requested to do so, satisfactory evidence that all persons who have supplied labor, material, or equipment for the work have been fully paid.

### ARTICLE 5. WORKMEN'S COMPENSATION ACT

The Contractor will furnish immediately a certificate from the Industrial Board of the State of Indiana, that he has complied with the Workmen's Compensation Act in accordance with Statutes of State of Indiana and Ordinances of City of Fort Wayne.

Any judgment rendered against the City of Fort Wayne in any suits for damages for injury to real or personal property, or for any injury sustained by any person growing out of any act or doing of Contractor, or its agents, employees or workmen and that any judgment of any court or award of any Board of Arbitrators or of the State Industrial Board of the State of Indiana rendered against the City of Fort Wayne in any suit or claim arising under said Workmen's Compensation acts of the State of Indiana, now or hereafter in force, relating to compensation for accidental injuries or death suffered by his employees or the employees of any Subcontractor or Subcontractors in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said Contractor, shall be conclusive against Contractor as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that Contractor indemnify and hold harmless City in the premises.



#### ARTICLE 6. NONDISCRIMINATION OF LABOR

The Contractor further agrees to be bounded by Section 15-13 (as amended), of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana as General Ordinance No. G-34-78 (as amended) on December 12th, 1978.

#### ARTICLE 7. PREVAILING WAGE SCALE

The Contractor agrees to pay and also require of his subcontractors that they pay wage rates on the work covered by this contract which shall not be less than the prescribed scale of wages as determined pursuant to the provisions of Statutes of Indiana and Ordinances of City of Fort Wayne.

#### ARTICLE 8. COMPONENT PARTS OF THIS CONTRACT

The following documents are as fully a part of the contract as if hereto attached or herein repeated:

- A. Advertisement for Bids, for Contract No. 371-1982.
- B. Instructions to Bidders for Contract No. 371-1982.
- C. Contractor's Proposal Dated June 29, 1983.
- D. Fort Wayne Water Pollution Control Engineering Department Construction Drawing No. SY-11102.
- E. General Specifications and Conditions, detailed specifications, construction standards for the installation of storm and sanitary sewers adopted July 23, 1980 and addendums thereof of the City of Fort Wayne's Water Pollution Control Engineering Department.
- F. Special Provisions.
- G. Workmen's Compensation Act Statutes of State of Indiana and Ordinances of City of Fort Wayne.
- H. Non Discrimination of labor General Ordinance No. G-34-78 (as amended).
- I. Prevailing wage scale.
- J. Performance Bond.
- K. Labor and Material Payment Bond.
- L. Comprehensive Liability Insurance Coverage.
- M. Application for Cut Permits.
- N. Escrow Agreement. (to be filled out when applicable)
- O. Notice of Award.
- P. Notice to Proceed.
- Q. Change Order.
- R. Notice of Final Acceptance.

#### ARTICLE 9. GUARANTEE OF WORKMANSHIP

The Contractor shall provide upon request of Board of Works a maintenance bond in full amount of the contract that warrants all materials, labor and equipment furnished and work performed for a period of one (1) year from date of final acceptance in writing by the Owner.



ARTICLE 10. INDEMNITY

Contractor shall furnish to owner, within ten (10) days of the date hereof a certificate from an insurer acceptable to owner showing personal injury and property damage. Insurance inforce issued in connection with the work to be done under this Contract in accordance with said Specifications of the City of Fort Wayne, Division I, Section 7.

ARTICLE 11. ADJUSTMENTS OF DISPUTES

All questions or controversies which may arise between the Contractor and the Owner under the provisions of this Contract shall be subject to the decision of the Chief Engineer of the Fort Wayne Water Pollution Control Department, and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications, or other phases or the work covered by this Contract will be permitted except on prior written authorization by the Board of Public Works.

ARTICLE 12. COMPLETION DATE

The Contractor agrees to complete the work specified in the within contract in 90 consecutive calendar days after having been ordered by the Owner to commence work under this contract.

ARTICLE 13. COUNCILMANIC APPROVAL

This Agreement, although executed on behalf of the Owner by the Mayor and Board of Public Works of the City of Fort Wayne, Indiana, shall not be binding upon the Owner unless and until the same shall have been ratified and approved by the Common Council of the City of Fort Wayne, Indiana, and should said Common Council fail to approve the same within ninety (90) days after the date hereof, then this Contract shall become wholly void.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

EARTH CONSTRUCTION AND ENGINEERING, INC.

BY: Michael C. Evertson  
Michael C. Evertson Vice-President

BY: Philip D. Shockney, Secretary

CITY OF FORT WAYNE, INDIANA

BY: Win Moses, Jr., Mayor

ATTEST:

Helen V. Gochenour  
Helen V. Gochenour, Clerk

APPROVED AS TO FORM AND LEGALITY:

R. J. Sniffen  
ASSOCIATE CITY ATTORNEY

BOARD OF PUBLIC WORKS

Stephen A. Bailey, Chairman

Betty R. Collins, Member

Approved by the Common Council of the City of Fort Wayne on \_\_\_\_\_ day of \_\_\_\_\_, 1983.



WAIVER OF RIGHT TO HAVE ESCROW FUNDS DEPOSITED  
IN INTEREST BEARING ACCOUNT

THIS AGREEMENT, made this 20<sup>th</sup> day of July, 1983,  
by and between EARTH CONSTRUCTION AND ENGINEERING, INC., Contractor, and City of  
Fort Wayne, Owner;

WITNESSETH:

WHEREAS, Contractor and Owner have entered into the contract dated  
July 20, 1983 for the construction of Pump Station Elimination/Interconnec-  
tion Project, Phase II; and

WHEREAS, by the terms of said contract, Owner is entitled to retain por-  
tions of the payments due and to become due to the Contractor on account of said  
work; and

WHEREAS, Contractor has the right to have said funds placed in an interest  
bearing escrow account; and

WHEREAS, Contractor desires to waive said right and agrees to accept the  
principal only when due of said funds so retained.

NOW, THEREFORE, Contractor on behalf of himself and all of his subcontrac-  
tors, workmen and materialmen, does hereby waive his right to have retainage  
placed in an interest bearing account.

Owner agrees to retain and hold said funds and to pay the same when due  
without interest thereon.

EARTH CONSTRUCTION AND  
ENGINEERING, INC.

Contractor

BY: Philip D. Shockney  
Philip D. Shockney Secretary

CITY OF FORT WAYNE  
BOARD OF PUBLIC WORKS

BY

BY

BY

Contract No. 371-1982 (Phase II)



# AMERICAN STATES INSURANCE COMPANY

INDIANAPOLIS, INDIANA

## PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That EARTH CONSTRUCTION & ENGINEERING, INC., 3333 Engle Road, Fort Wayne, IN 46809  
as Principal, hereinafter called Principal, and AMERICAN STATES INSURANCE COMPANY, a corporation of the state  
of Indiana, with its home office in the City of Indianapolis, Indiana, U.S.A., as Surety, hereinafter called Surety, are  
held and firmly bound unto Board of Public Works, City of Fort Wayne, City County Building,  
Fort Wayne, IN

as Oblige, hereinafter called Oblige, in the amount of Two Thousand Three Hundred and no/100 - -

----- Dollars (\$ 2,300.00 - -),  
for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors  
and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated July 18, 1983 entered into  
a contract with Oblige for Pump Station Elimination/Interconnection Project - Phase II -  
Resolution #371-82

which contract is by reference made a part hereof, and is hereinafter referred to as the contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That, if Principal shall  
promptly and faithfully perform said contract, then this obligation shall be null and void; otherwise it shall  
remain in full force and effect.

Whenever Principal shall be, and be declared by Oblige to be in default under the contract, the Oblige  
having performed Oblige's obligations thereunder:

- (1) Surety may promptly remedy the default subject to the provisions of paragraph 3 herein, or;
- (2) Oblige after reasonable notice to Surety may, or Surety upon demand of Oblige may arrange for the  
performance of Principal's obligation under the contract subject to the provisions of paragraph 3 herein;
- (3) The balance of the contract price, as defined below, shall be credited against the reasonable cost of  
completing performance of the contract. If completed by the Oblige, and the reasonable cost exceeds  
the balance of the contract price, the Surety shall pay to the Oblige such excess, but in no event shall the  
aggregate liability of the Surety exceed the amount of this bond. If the Surety arranges completion or  
remedies the default, that portion of the balance of the contract price as may be required to complete the  
contract or remedy the default and to reimburse the Surety for its outlays shall be paid to the Surety at  
the times and in the manner as said sums would have been payable to Principal had there been no default  
under the contract. The term "balance of the contract price," as used in this paragraph, shall mean the  
total amount payable by Oblige to Principal under the contract and any amendments thereto, less the  
amounts heretofore properly paid by Oblige under the contract.

Any suit under this bond must be instituted before the expiration of two years from date on which final  
payment under the contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the  
Oblige named herein or the heirs, executors, administrators or successors of the Oblige.

Signed and sealed this 14th day of July 1983.

EARTH CONSTRUCTION & ENGINEERING, INC.

*Michael C. Ebert*

*Vice-President*

(SEAL)

Principal

AMERICAN STATES INSURANCE COMPANY

Surety

*Fred L. Tagtmeyer*

By *Fred L. Tagtmeyer*  
Fred L. Tagtmeyer

Attorney-in-Fact



# AMERICAN STATES INSURANCE COMPANY

INDIANAPOLIS, INDIANA

## LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

That EARTH CONSTRUCTION & ENGINEERING, INC., 3333 Engle Road, Fort Wayne, IN 46809  
as Principal, hereinafter called Principal, and AMERICAN STATES INSURANCE COMPANY, a corporation of the State  
of Indiana, with its home office in the City of Indianapolis, Indiana, U.S.A., as Surety, hereinafter called Surety, are

held and firmly bound unto Board of Public Works, City of Fort Wayne, City County Building,  
Fort Wayne, IN

as Oblige, hereinafter called Oblige, for the use and benefit of claimants as hereinbelow defined, in the amount  
of Two Thousand Three Hundred and no/100 - - - - - Dollars (\$ 2,300.00 - -),  
for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors  
and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated July 18, 1983 entered into a  
contract with Oblige for Pump Station Elimination/Interconnection Project - Phase II -  
Resolution #371-82

which contract is by reference made a part hereof, and is hereafter referred to as the contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That if the Principal shall  
promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably  
required for use in the performance of the contract, then this obligation shall be void; otherwise it shall remain  
in full force and effect, subject, however, to the following conditions:

- (1) A claimant is defined as one having a direct contract with the Principal for labor, material, or both,  
used or reasonably required for use in the performance of the contract, labor and material being con-  
strued to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental  
of equipment directly applicable to the contract.
- (2) The above-named Principal and Surety hereby jointly and severally agree with the Oblige that every  
claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90)  
days after the date on which the last of such claimant's work or labor was done or performed, or materials  
were furnished by such claimant, may sue on this bond for the use of such claimant in the name of the  
Oblige, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and  
have execution thereon, provided, however, that the Oblige shall not be liable for the payment of any  
costs or expenses of any such suit.
- (3) No suit or action shall be commenced hereunder by any claimant,
  - (a) Unless claimant shall have given written notice to any two of the following: The Principal, the  
Oblige, or the Surety above named, within ninety (90) days after such claimant did or performed  
the last of the work or labor, or furnished the last of the materials for which said claim is made,  
stating with substantial accuracy the amount claimed and the name of the party to whom the  
materials were furnished, or for whom the work or labor was done or performed. Such notice shall  
be served by mailing the same by registered mail, postage prepaid, in an envelope addressed to the  
Principal, Oblige or Surety, at any place where an office is regularly maintained for the transaction  
of business, or served in any manner in which legal process may be served in the state in which the  
aforesaid project is located, save that such service need not be made by a public officer.
  - (b) After the expiration of one (1) year following the date on which Principal ceased work on said  
contract.
  - (c) Other than in a state court of competent jurisdiction in and for the county or other political sub-  
division of the state in which the project, or any part thereof, is situated, or in the United States  
District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.
- (4) The amount of this bond shall be reduced by and to the extent of any payment or payments made in  
good faith hereunder.

Signed and sealed this 14th day of July 19 83

EARTH CONSTRUCTION & ENGINEERING, INC.

Philip D. Shaker (SEAL)  
Principal

AMERICAN STATES INSURANCE COMPANY

Fred L. Tagmeyer Surety  
By Fred L. Tagmeyer Attorney-in-Fact



TITLE OF ORDINANCE Contract 371-82, Pump Station/Interconnection Project, Phase II

DEPARTMENT REQUESTING ORDINANCE Board of Public Works

SYNOPSIS OF ORDINANCE Contract 371-82, Phase II, Pump Station Elimination/Interconnect  
is intended and adapted for use by property holders whose property abuts along the  
line of said sewer; but is also intended & adapted for receiving sewage from  
collateral drains already constructed, be and the same is hereby ordered:

PHASE II

FORCE MAIN INTERCONNECTION

Beginning at a proposed manhole to be located 80+ feet West of and 55+ feet  
North of the centerline intersection of St. Joe and Rothman Roads, on an existing  
24" sanitary sewer line thence Southerly a distance of 65 feet along a curve  
of radius 35 feet and chord of 56 feet to the location of an existing 4" force main  
Earth Construction Company, Inc. - Contractor

EFFECT OF PASSAGE Improved sewage facilities at above area.

EFFECT OF NON-PASSAGE

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$2,300.00

ASSIGNED TO COMMITTEE



BILL NO. S-83-08-21

REPORT OF THE COMMITTEE ON CITY UTILITIES

WE, YOUR COMMITTEE ON City Utilities TO WHOM WAS REFERRED AN  
ORDINANCE approving a Contract by the City of Fort Wayne by and  
through its Board of Public Works and Earth Construction &  
Engineering, Inc., for Res. #371-82, Phase II, Pump Station Elimination/  
Interconnection Project

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT  
BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE DO PASS.

VICTURE L. SCRUGGS, CHAIRMAN

*Victure Scruggs*

SAMUEL J. TALARICO, VICE CHAIRMAN

*Samuel J. Talarico*

DONALD J. SCHMIDT

*D Schmidt*

MARK E. GIAQUINTA

*Mark E. Giaquinta*

PAUL M. BURNS

*Paul M. Burns*

*Concurred 1-23*

*J. Heaney*



TITLE OF ORDINANCE Contract 371-82, Pump Station/Interconnection Project, Phase II

DEPARTMENT REQUESTING ORDINANCE Board of Public Works

S-83-08-21

SYNOPSIS OF ORDINANCE Contract 371-82, Phase II, Pump Station Elimination/Interconne

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EFFECT OF PASSAGE Improved sewage facilities at above area.

EFFECT OF NON-PASSAGE

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$2,300.00

ASSIGNED TO COMMITTEE